

REMARKS

This paper is submitted in response to the Office action mailed on March 4, 2008. This paper amends claims 1, 15, 29, 32, 34-37, 39-41 and 43. Claims 3, 17 and 31 were previously canceled. Accordingly, after entry of this Amendment and Response, claims 1, 2, 4-16, 18-30 and 32-46 will be pending.

I. Specification

The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. Specifically, there is insufficient antecedent basis for the limitation of “a machine-readable storage medium” of claim 15. In response, claim 15 is amended to recite the limitation of “a machine-readable medium.” Support for a “machine-readable medium” may be found at least in paragraph 0042 of the present application. It is respectfully submitted that the specification now provides proper antecedent basis for the claimed subject matter and such indication is respectfully requested.

II. Claim Rejections Under 35 U.S.C. § 101

Claims 15-28 are rejected under 35 U.S.C. § 101 because the claimed invention is directed to non-statutory subject matter. Specifically, the claim limitation of a machine-readable medium includes carrier waves or signals. In response, the specification is amended to remove the inclusion of carrier wave signals as a computer-readable medium. It is respectfully submitted that claims 15-28 are now in compliance with 35 U.S.C. § 101 and such indication is respectfully requested.

Claim 29 is rejected under 35 U.S.C. § 101 because the claim lacks the necessary physical articles or objects to constitute a machine or a manufacture within the meaning of 35 U.S.C. § 101. Claims 30 and 32-42 are similarly rejected as dependents of rejected claim 29. In response to the rejections, claim 29 is amended to include the physical computer hardware of “a processing system configured to process computer-executable code.” Dependent claims 32, 34-37 and 39-41 are similarly amended. It is respectfully submitted that claims 29, 30 and 32-42 are now in compliance with 35 U.S.C. § 101 and such indication is respectfully requested.

III. Claim Rejections Under 35 U.S.C. § 103

Claims 1, 2, 6-8, 11, 12, 15, 16, 20-22, 25, 26, 29, 30, 34-36, 39, 40 and 43-46 are rejected under 35 U.S.C. § 103(a) as being unpatentable over United States Patent No. 6,112,319 to Paulson et al. (hereinafter “Paulson”), in view of United States Patent No. 6,453,392 to Flynn et al. (hereinafter “Flynn”). Claims 4, 5, 9, 10, 13, 14, 18, 19, 23, 24, 27,

28, 32, 33, 37, 38, 41 and 42 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Paulson, in view of Flynn, in further view of United States Patent No. 6,546,443 to Kakivaya et al. (hereinafter "Kakivaya").

A proper prima facie obviousness rejection requires that the combined references teach or suggest all of the claim limitations. For the reasons recited below, it is respectfully submitted that the combination of Paulson, Flynn and Kakivaya does not present a prima facie case of obviousness.

A. Amended independent claims 1, 15, 29 and 43 are patentable because neither Paulson nor Flynn discloses the limitation of receiving a command to create a backup of data stored in the data storage system

As amended, independent claim 1 includes the limitation of "receiving a command to create a backup of data stored in the data storage system." Amended independent claims 15, 29 and 43 include similar limitations. Support for these amendments can be found in at least paragraphs 0043-0046 of the present application. It is respectfully submitted that neither Paulson nor Flynn, alone or in combination, teach or suggest these limitations as required by amended claims 1, 15, 29 and 43.

The Office action relies on Paulson to teach receiving a command to create a backup of data stored in the data storage system. *See Office action, pgs. 5, 8, 10 and 12.* Paulson describes a method for verifying the accuracy of stored data in a computer system where read and write requests can pass earlier-issued read and write requests. *See Paulson, Abstract.* To verify the accuracy of stored data, the method monitors read and write requests to a particular locations and issues an error if the returned data is inaccurate. *See Paulson, Abstract.* In other words, Paulson teaches a method to ensure a computer system receives the correct data when issuing a read request. However, Paulson fails to describe receiving a command to create a backup of data stored in a data storage system as required by the amended claims.

In fact, there would be no motivation to provide a command to create a backup of data stored in a storage system in Paulson because the method of Paulson does not create a backup for the data stored. The method described by Paulson merely ensures that data read from a data system is accurate "in satisfaction of a read request." *See Paulson, col. 4 lines 30-35.* Because Paulson does not contemplate creating a backup of the data stored in a data system, it would be unnecessary to provide a command to create a backup of the data stored. Therefore, not only does Paulson fail to disclose providing a command to create a backup of the data stored as required by the amended claims, there would be no motivation to provide for such a command. Thus, Paulson fails to teach receiving a command to create a backup of data stored in the data storage system as required by amended claims 1, 15, 29 and 43.

Similarly, Flynn also fails to provide for a command to create a backup of data stored in a storage system. Flynn discloses a method for sharing dedicated devices between virtual machine guests. In the method described by Flynn, a storage controller controls access to a storage device such that “virtual machines of a single host processor may share the storage device.” See *Flynn*, col. 5 lines 19-22. However, Flynn fails to describe receiving a command to create a backup of data stored in a data storage system as required by the amended claims. In fact, similar to Paulson, there would be no motivation in Flynn to provide a command to create a backup of data stored in a storage system because the method of Flynn does not create a backup for the data stored. Rather, the method described by Flynn merely provides access to a shared device, such as a data storage device, among virtual machines. Thus, because Flynn fails to contemplate creating a backup of the data stored in a data system, Flynn also fails to disclose providing a command to create a backup of the data stored as required by amended claims 1, 15, 29 and 43.

B. Dependent claims 2, 4-14, 16, 18-28, 30, 32-42 and 44-46 are patentable because they depend upon and contain all of the limitations of independent claims 1, 15, 29 and 43.

Dependent claims 2, 6-8, 11, 12, 16, 20-22, 25, 26, 30, 34-36, 39, 40 and 44-46 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Paulson in view of Flynn. These claims depend upon and contain all of the limitations of independent claims 1, 15, 29 and 43. As shown above, neither Paulson nor Flynn, alone or in combination, teach or suggest the limitation of “receiving a command to create a backup of data stored in the data storage system” as required by the independent claims. Therefore, for at least the reasons provided above, Paulson in view of Flynn fails to teach or suggest each and every limitation of the dependent claims. As such, dependent claims 2, 6-8, 11, 12, 16, 20-22, 25, 26, 30, 34-36, 39, 40 and 44-46 are patentable over Paulson in view of Flynn.

Dependent claims 4, 5, 9, 10, 13, 14, 18, 19, 23, 24, 27, 28, 32, 33, 37, 38, 41 and 42 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Paulson, in view of Flynn, in further view of Kakivaya. However, these claims depend upon and contain all of the limitations of independent claims 1, 15, 29 and 43. As demonstrated above, neither Paulson nor Flynn, alone or in combination, teach or suggest the limitation of “receiving a command to create a backup of data stored in the data storage system” as required by the independent claims. Similarly, Kakivaya also fails to disclose the limitation. Kakivaya discloses a reader-writer lock with time out support. However, Kakivaya fails to disclose a method or system that receives a command to create a backup of data stored in a data storage system. As such, for at least the reasons provided above, dependent claims , 5, 9, 10, 13, 14, 18, 19, 23, 24, 27, 28, 32, 33, 37, 38, 41 and 42 are similarly patentable over Paulson in combination with Flynn and Kakivaya.

C. Conclusion

For at least the reasons set forth in both sections A and B above, Paulson in combination with Flynn and Kakivaya fail to disclose all of the limitations of the rejected claims. Accordingly, it is respectfully submitted that these claims are allowable over the cited references. The Applicant thus respectfully requests that the Examiner withdraw the rejections and allow these claims over the cited references.

IV. Conclusion

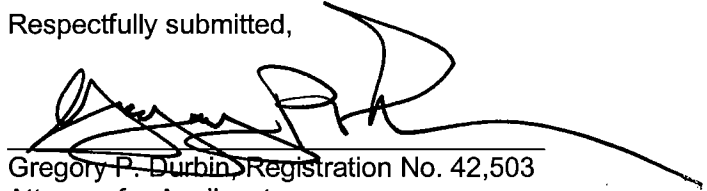
The Applicant thanks the Examiner for his thorough review of the application. The Applicant respectfully submits the present application, as amended, is in condition for allowance and respectfully requests the issuance of a Notice of Allowability as soon as practicable.

The Applicant believes no fees or petitions are due with this filing. However, should any such fees or petitions be required, please consider this a request therefor and authorization to charge Deposit Account No. 04-1415 as necessary.

If the Examiner should require any additional information or amendment, please contact the undersigned attorney.

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Respectfully submitted,



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